

Judge Lasnik



03-CR-00406-STMT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL LEWIS CLARK,

Defendant.

NO. CR03-406L

PLEA AGREEMENT

The United States of America, by and through John McKay, United States Attorney for the Western District of Washington, and Susan B. Dohrmann and John J. Lulejian, Assistant United States Attorneys for said District, and the defendant, MICHAEL LEWIS CLARK, and his attorney, Michael Filipovic, Assistant Federal Public Defender, enter into the following Plea Agreement, pursuant to Federal Rule of Criminal Procedure 11(a)(2) and (c)(1)(C):

1. The Charges. Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enter a plea of guilty to the following charges contained in the Indictment, that is, travel in foreign commerce and engaging, and attempting to engage, in illicit sexual conduct with minors, in violation of Title 18, United States Code, Section 2423(c) and (f) (Counts 1 and 2 of the Indictment).

Defendant further understands that before entering his plea of guilty, Defendant will be placed under oath. Any statement given by Defendant under oath may be used by the government in a prosecution for perjury or false statement.

1 2. Elements of the Offense. The elements of the offense of travel in foreign
2 commerce and engaging in illicit sexual conduct with minors as charged in Counts 1 and 2
3 of the Indictment, in violation of Title 18, United States Code, Section 2423(c) are as
4 follows:

5 **COUNT 1**

6 a. First, on the dates set forth in the Indictment, Defendant traveled in
7 foreign commerce;

8 b. Second, Defendant thereafter engaged in illicit sexual conduct as
9 defined in Title 18, United States Code, Section 2423(f);

10 c. Third, Defendant engaged in illicit sexual conduct with a boy under
11 the age of 18 years, that is, with John Doe 1, approximately 10 years of age;

12 d. Fourth, Defendant was a United States citizen at the time of the
13 offense.

14 **COUNT 2**

15 a. First, on the dates set forth in the Indictment, Defendant traveled in
16 foreign commerce;

17 b. Second, Defendant thereafter attempted to engage in illicit sexual
18 conduct as defined in Title 18, United States Code, Section 2423(f);

19 c. Third, Defendant attempted to engage in illicit sexual conduct with a
20 boy under the age of 18 years, that is, with John Doe 2, approximately 13 years of age;

21 d. Fourth, Defendant was a United States citizen at the time of the
22 offense.

23 3. The Penalties. Defendant understands that the statutory penalties as to each
24 count for the offense of travel in foreign commerce and engaging in illicit sexual conduct
25 with minors, as charged in Counts 1 and 2 of the Indictment are:

26 a. imprisonment for up to THIRTY (30) years, a fine of up to TWO
27 HUNDRED FIFTY THOUSAND dollars (\$250,000.00), a period of supervision following
28 release from prison of not less than THREE (3) but not more than FIVE (5) years, and a

1 ONE HUNDRED dollar (\$100.00) penalty assessment. Defendant agrees that the penalty
2 assessment shall be paid at or before the time of sentencing.

3 b. Defendant agrees that any monetary penalty the Court imposes,
4 including the special assessment, fine, costs or restitution, is due and payable immediately,
5 and further agrees to submit a completed Financial Statement of Debtor form as requested
6 by the United States Attorney's Office.

7 c. Defendant understands that supervised release is a period of time
8 following imprisonment during which he will be subject to certain restrictions and
9 requirements. Defendant further understands that if supervised release is imposed and he
10 violates one or more of its conditions, he could be returned to prison for all or part of the
11 term of supervised release that was originally imposed. This could result in Defendant
12 serving a total term of imprisonment greater than the statutory maximum stated above.

13 d. Defendant understands that in addition to any term of imprisonment
14 and/or fine that is imposed, the Court may order Defendant to pay restitution to any victim
15 of the offense, as required by law. Defendant further understands that pursuant to Title
16 18, United States Code, Section 2253(a) a consequence of pleading guilty may include the
17 forfeiture of certain property, real or personal, used or intended to be used to commit or to
18 promote the commission of such offense, either as a part of the sentence imposed by the
19 Court, or as a result of civil, judicial, or administrative processes, and any and all sexually
20 explicit or sexually related material seized from the defendant by the Cambodian National
21 Police in Cambodia.

22 4. Rights Waived by Pleading Guilty. Defendant understands that, by pleading
23 guilty, he knowingly and voluntarily waives the following rights:

- 24 a. The right to plead not guilty, and to persist in a plea of not guilty;
25 b. The right to a speedy and public trial before a jury of Defendant's
26 peers;

- 1 c. The right to the effective assistance of counsel at trial, including, if
2 Defendant could not afford an attorney, the right to have the Court appoint one for
3 Defendant;
- 4 d. The right to be presumed innocent until guilt has been established at
5 trial, beyond a reasonable doubt;
- 6 e. The right to confront and cross-examine witnesses against Defendant
7 at trial;
- 8 f. The right to compel or subpoena witnesses to appear on Defendant's
9 behalf at trial;
- 10 g. The right to testify or to remain silent at trial, at which trial such
11 silence could not be used against Defendant; and
- 12 h. The right to appeal a finding of guilt;
- 13 i. The right to appeal any pretrial rulings except as otherwise provided
14 in this Plea Agreement, whereby Defendant reserves the right to appeal the district court's
15 ruling on Defendant's motion to dismiss the Indictment, solely with respect to issues
16 related to constitutional, statutory construction and jurisdictional questions.

17 5. Applicability of Sentencing Guidelines. Defendant understands and
18 acknowledges the following:

- 19 a. The United States Sentencing Guidelines, promulgated by the
20 United States Sentencing Commission, are applicable to this case;
- 21 b. The Court will determine Defendant's applicable Sentencing
22 Guidelines range at the time of sentencing;
- 23 c. The Court may impose any sentence authorized by law, including a
24 sentence that, under some circumstances, departs from any applicable Sentencing
25 Guidelines range up to the maximum term authorized by law;
- 26 d. The Court is not bound by any recommendation regarding the
27 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines
28 range offered by the parties, or by the United States Probation Department; and

1 e. Defendant may not withdraw a guilty plea solely because of the
2 sentence imposed by the Court, unless the Court indicates its intent to sentence the
3 defendant above the stipulated guideline range of 78-97 months' imprisonment.
4 Defendant further agrees to waive his right to withdraw his plea for "any reason or no
5 reason," before the Court accepts his plea, as permitted by Fed. R. Crim. P. 11(d)(1), and
6 acknowledges that if he does seek to withdraw his plea of guilty he will be required to
7 make a showing under Fed. R. Crim. P. 11(d)(2) that either the Court had refused to accept
8 the Plea Agreement, or that there was some other "fair and just reason for requesting the
9 withdrawal" as required by this Rule.

10 6. Agreement as to Sentencing Guidelines: The parties agree and stipulate that
11 USSG § 2A3.1 is applicable to Count 1 of the Indictment; that USSG § 2A3.4 is
12 applicable to Count 2; and that the sentencing range in this case is 78-97 months'
13 imprisonment. The parties further agree and stipulate that the government will not seek
14 any upward departure from this stipulated range of 78-97 months. The parties further
15 agree and stipulate that the defendant may seek a downward departure from this range
16 solely on the basis of USSG §§ 5H1.1, 5H1.4, and 5K2.22, concerning age and physical
17 condition, and on no other grounds. The defendant acknowledges and understands that the
18 government will oppose any such downward departure.

19 7. Agreement as to Pre-Trial Motions. The defendant reserves the right to
20 pursue his pre-trial motion to dismiss available to him under Fed. R. Crim. P. 12(b)(2) and
21 (3) based on constitutional, jurisdictional and statutory construction grounds only and
22 reserves his right to appeal any adverse rulings on this motion pursuant to Fed. R. Crim. P.
23 11(a)(2). Additionally, Defendant specifically agrees that he will file no other motions,
24 including but not limited to, motions to suppress evidence and statements and waives his
25 right to file such motions. Finally, defendant acknowledges and understands that pursuant
26 to Title 18, United States Code, Section 3161(h)(1)(F) and (I), the delay between the filing
27 of defendant's pre-trial motion to dismiss and the conclusion of the hearing on, or other
28 prompt disposition of, such motion, shall be excluded in computing the time within which

1 the trial in this matter must commence. Defendant further agrees that in the event that
2 this matter does proceed to trial and the government needs additional time to prepare for
3 trial in light of the unique circumstances of this case involving the transportation of
4 several essential government witnesses from Cambodia to the United States, defendant
5 will not oppose a further extension of time for such preparation, pursuant to Title 18,
6 United States Code, Section 3161(h)(8)(B)(iv).

7 8. Ultimate Sentence. Defendant acknowledges that no one has promised or
8 guaranteed what sentence the Court will impose except as set forth in this Plea Agreement

9 9. Statement of Facts. The parties agree on the following facts in support of
10 Defendant's guilty plea and for purposes of calculating the base offense level of the
11 Sentencing Guidelines. Defendant admits he is guilty of the charged offenses.

12 *a United States citizen*
13 On or about May 1, 2003, MICHAEL LEWIS CLARK ("CLARK"), traveled from
14 Seattle, Washington, to Phnom Penh, Cambodia, departing from the Seattle-Tacoma
International Airport.

15 On June 28, 2003, CLARK was arrested in Phnom Penh, Cambodia, by the
16 Cambodian National Police, on a charge of debauchery involving illicit sexual conduct
17 with two males, John Doe 1 and John Doe 2, approximately 10 and 13 years old
respectively. On July 11, 2003, Senior Special Agent Gary Phillips, Deputy Customs
Attache ("DCA") in Bangkok, Thailand, was informed of Clark's arrest. CLARK was
detained by the Cambodian authorities.

18 On July 19, 2003, DCA Phillips interviewed two minor male children who had been
19 victimized by CLARK. One of the boys, John Doe 1, stated that he was 10 years old and
homeless. John Doe stated that in the late morning or early afternoon of June 28, 2003, he
20 met CLARK through another boy, John Doe 2, age 13. John Doe 1 stated that he and John
Doe 2 went to the Pyco Guesthouse with CLARK. CLARK directed John Doe 2 to lie on
21 his back and CLARK kneeled on top of him and directed John Doe 2 to masturbate
CLARK with John Doe 2's hand. At the same time, John Doe 1 inserted his index finger
22 in CLARK's anus. This activity continued until CLARK ejaculated onto John Doe 2's
chest. According to John Doe 1, CLARK used gestures to indicate what type of sexual
23 activity he wanted and also guided him. John Doe 1 stated that CLARK took hold of his
finger and gestured that he wanted John Doe 1 to put his finger in CLARK's rectum.

24 On July 21, 2003, DCA Phillips interviewed CLARK after advising him of his
25 Miranda rights. CLARK stated that on June 28, 2003, he had showered with John Doe 1
and John Doe 2, instructing them to put soap on his rectal area, explaining that he did not
26 know why he did that and that the only explanation that he could think of was that it
excited him. CLARK also admitted putting soap on the boys' rectal area. CLARK stated
27 that he instructed the boys to dry themselves off with a towel and get on the bed in the
room he had obtained at the Pyco Guesthouse. CLARK first asked John Doe 2 to perform
28 oral sex on him, but John Doe 2 refused. CLARK then said that John Doe 2 may have
helped him obtain an erection by stroking CLARK's penis. According to CLARK, after

1 he ejaculated, he began to masturbate while John Doe 1 digitally penetrated CLARK's
2 rectum at CLARK's direction. CLARK intended to pay each of the boys and each of the
3 boys expected such payment in exchange for the sexual
4 encounter.

5 10. Representations by the United States and the Defendant, and Non-
6 Prosecution of Additional Offenses. As part of this Plea Agreement, the United States
7 Attorney's Office for the Western District of Washington agrees not to prosecute
8 Defendant for any additional offenses known to it as of the time of this Agreement that are
9 based upon evidence in its possession at this time, or that arise out of the conduct giving
10 rise to this investigation. In this regard, Defendant recognizes that the United States has
11 agreed not to prosecute all of the criminal charges that the evidence establishes were
12 committed by Defendant solely because of the promises made by Defendant in this
13 Agreement. Defendant acknowledges and agrees, however, that for purposes of preparing
14 the Presentence Report, the United States Attorney's Office will provide the United States
15 Probation Office with evidence of all relevant conduct committed by Defendant.

16 11. Forfeiture. Pursuant to Title 18, United States Code, Section 2253(a),
17 Defendant agrees to forfeit to the United States immediately all of his right, title and
18 interest in any and all sexually explicit or sexually related material seized from the
19 defendant by the Cambodian National Police in Cambodia.

20 12. Acceptance of Responsibility. If the defendant has accepted responsibility
21 for the offense and if the defendant accepts this Plea Agreement and enters a plea of guilty
22 no later than close of business, March 17, 2004, the United States will recommend an
23 appropriate downward adjustment of three (3) levels pursuant to the United States
24 Sentencing Guidelines, Section 3E1.1(b).

25 13. Voluntariness of Plea. Defendant acknowledges that he has entered into this
26 Plea Agreement freely and voluntarily, and that no threats or promises, other than the
27 promises contained in this Plea Agreement, were made to induce Defendant to enter this
28 plea of guilty.

14. Statute of Limitations. In the event that this Agreement is not accepted by
the Court for any reason, or Defendant has breached any of the terms of this Plea

1 Agreement, the statute of limitations shall be deemed to have been tolled from the date of
2 the Plea Agreement to: (1) 30 days following the date of non-acceptance of the Plea
3 Agreement by the Court; or (2) 30 days following the date on which a breach of the Plea
4 Agreement by Defendant is discovered by the United States Attorney's Office.

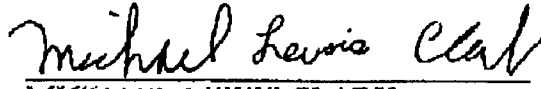
5 15. Post-Plea Conduct. Defendant understands that the terms of this Plea
6 Agreement apply only to conduct that occurred prior to the execution of this Agreement.
7 If, after the date of this Agreement, Defendant should engage in conduct that would
8 warrant an increase in Defendant's adjusted offense level or justify an upward departure
9 under the Sentencing Guidelines (examples of which include, but are not limited to:
10 obstruction of justice, failure to appear for a court proceeding, criminal conduct while
11 pending sentencing, and false statements to law enforcement agents, the probation officer
12 or Court), the United States is free under this Agreement to seek a sentencing
13 enhancement or upward departure based on that conduct.

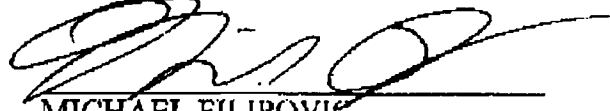
14 16. Completeness of Agreement. The United States and Defendant
15 acknowledge that these terms constitute the entire Plea Agreement between the parties.
16 This Agreement only binds the United States Attorney's Office for the Western District of
17 Washington. It does not bind any other United States Attorney's Office or any other office
18 or agency of the United States, or any state or local prosecutor.

19 17. The parties agree that Defendant should receive credit toward his sentence
20 for the time he was incarcerated in Cambodia in relation to the crimes charged in the
21 Indictment from the date of his arrest on June 28, 2003. The parties further agree that if
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1 the Bureau of Prisons does not grant credit for this time, the Defendant is entitled to a
2 sentencing adjustment to reflect this prior detention in Cambodia.

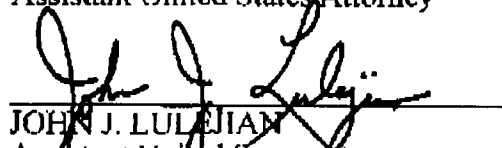
3 Dated this 17th day of March, 2004.

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5 
6 MICHAEL LEWIS CLARK
7 Defendant

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9 MICHAEL FILIPOVIC
10 Attorney for Defendant

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12 SUSAN M. HARRISON
13 Assistant United States Attorney

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